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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|---|---|---|---|
| 09/682,448 | 09/04/2001 | Brad Jaehn | 113402-008 | 9501 |

26689 7590 11/08/2004

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| EXAMINER | |
|---|---|
| RUHL, DENNIS WILLIAM | |

| ART UNIT | PAPER NUMBER |
|---|---|
| 3629 | |

DATE MAILED: 11/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

| Office Action Summary | Application No. | Applicant(s) | |
|---|---|---|---|
| | 09/682,448 | JAEHN ET AL. | E |
| | Examiner | Art Unit | |
| | Dennis Ruhl | 3629 | |

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1)☐ Responsive to communication(s) filed on _____.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4)☒ Claim(s) 1-33 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 1-33 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

**Application Papers**

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

1. Applicant's response of 10/21/04 has been entered. The examiner will address applicant's arguments at the end of this office action.

2. 35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-10 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

With respect to claims 1-30, the claims are reciting data in a matrix form, which does not define anything tangible or real; therefore the claim is directed to non-statutory subject matter. The added language of "for display ..." only sets forth the intended use of the data and does not materially change the scope of the claim. Claim 1 is still directed to non-statutory subject matter.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 11-31 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

For claims 11,18, the scope is not clear to the examiner. The preamble of the claim sets forth that the claimed invention is "A display matrix" that has the intended use of "for presenting rental car information". At the end of the claim it has been recited that

the column, row, headings, and data elements are displayed on a display device. This contradicts the preamble so it is not clear if the claim is directed to just a data matrix or if the claim is directed to a display device that is displaying a particular type of data. A potential infringer would reasonably find the claim scope unclear and this renders the claims indefinite.

For claim 25, the intended use of the display is claimed as being for displaying rental car data. The recent amendment now recites that the display is displaying the rental car data. Which is it? Is the claim directed to just a display device that is capable of displaying rental car data or directed to a display device that is displaying the claimed data? A potential infringer would reasonably find the claim scope unclear and this renders the claims indefinite.

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

6. Claims 1-30 are rejected under 35 U.S.C. 102(a) as being anticipated by "Our technology", ITA software, 4/24/01 (A21 from IDS of 5/27/03).

With respect to the claims and how they have been interpreted, the examiner wants to again inform the applicant that the type of data being displayed (i.e. car rental information) is considered non-functional descriptive material and does not serve as a limitation. See *In re Gulack*, 217 USPQ 401 (CAFC 1983). The examiner is only giving

patentable weight to the fact that there is data in a particular format (rows and columns), but the type of data (car company identifier, type of vehicle, lowest price, etc.) has been given minimal patentable weight because the type of data is non-functional descriptive material that is not functionally related to the display device itself. The type of data being displayed is not enough to define over the prior art to ITA.

For claims 1-30, ITA discloses data elements in rows and columns as claimed. See page 2. ITA also discloses a data identifier at the head of each row and column as claimed. The information displayed by ITA is displayed by a network web browser as claimed.

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

8. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to

consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

9. Claims 31-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over "Our technology", ITA software, 4/24/01 (A21 from IDS of 5/27/03) in view of Daughtrey (2003/0018500).

For claims 31;32, ITA discloses a way of identifying and displaying airline flight information (based on user entered criteria) from more than one airline so that a consumer can easily and clearly see a summary of available flights for comparison purposes. ITA discloses a service provider identifier at the top of each column of flight data and a flight type identifier at the head of each row of data. At the intersection of each row and column is the associated pricing data relevant to that provider and type of flight. The data is presented in matrix form as claimed. ITA does not disclose displaying car rental information as claimed. Daugherty discloses a travel planning display method for displaying and comparing pricing of different airline flights. Daugherty discloses in paragraph 14 that the travel planning system can also be used for other transportation forms such as bus and railroad. It would have been obvious to one of ordinary skill in the art to utilize the display method of ITA with rental cars and the companies that rent cars, so that customers of rental car companies can enjoy the use of an easy to use pricing summary display. In view of Daugherty, one of ordinary skill in the art would have found the use of the ITA system in rental cars to be obvious.

For claim 33, ITA does not disclose the use of a hypertext link as claimed. It would have been obvious to one of ordinary skill in the art at the time the invention was

made to use a hypertext link as claimed so that a consumer can easily obtain more detailed information about the rental they are interested in. Hypertext links are old and well known in the art and is considered obvious to one of ordinary skill in the art.

10. Applicant's arguments filed 10/21/04 have been fully considered but they are not persuasive.

With respect to the 101 rejection and claims 1-10, the argument is not commensurate with the scope of the claims. The claims only recite that the data is "for display" on a display device. This is setting forth the intended use of the data and results in the claim still being directed to a non-tangible thing (i.e. just data). Claims 1-10 are still directed to non-statutory subject matter.

With respect to the argument concerning the 102 rejection, the argument is non-persuasive. Applicant has argued that there is a functional relationship between the data being displayed and the display device itself, so the examiner must give patentable weight to the type of data being claimed. The examiner disagrees with this position because the displaying of rental car data has nothing to do functionally with the display device. What is the functional relationship? The display device could display any kind of data, whether it be sports scores, shoe sizes for boots, or rental car data. The car rental data is not in any way functionally related to the display itself; therefore the data is non-functional descriptive material that does not serve to distinguish over the prior art. Based on applicant's argument, anyone who claims a new type of data for display should be able to patent it. So, if one were to use the same rows and columns as

applicant does to display the price for a vacuum cleaner at more than one retailer, this would be patentable because the prior art does not disclose the displaying of vacuum prices? This clearly is an improper way to look at the issue. The 102 is deemed proper.

Concerning the 103 rejection the arguments are non-persuasive. The only difference with the instant invention and the prior art is the displaying of rental car data as opposed to airline data. The examiner feels that the secondary reference teaches the display of other types of transportation options (bus, train) and in view of this, it is considered obvious to display car rental data as claimed. As an example, should someone claiming bike rental data be given a patent in view of the instant disclosure because they display bike data instead of car data? Arguments for patentability arguing what kind of data is being displayed is non-persuasive to the instant examiner.

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dennis Ruhl whose telephone number is 703-308-2262. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on 703-308-2702. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DENNIS RUHL
PRIMARY EXAMINER